



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5666

by Rep. Elgie R. Sims, Jr.

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4-1
730 ILCS 5/5-8-6

from Ch. 38, par. 1005-4-1
from Ch. 38, par. 1005-8-6

Amends the Unified Code of Corrections. Provides that in imposing a sentence for a Class 3 or 4 felony, other than a violent crime as defined in the Rights of Crime Victims and Witnesses Act, the court shall determine and indicate in the sentencing order whether the defendant has 4 or more or fewer than 4 months remaining on his or her sentence accounting for time served. Provides that an offender sentenced to a term of imprisonment for a Class 3 or 4 felony, other than a violent crime as defined in the Rights of Crime Victims and Witnesses Act, in which the sentencing order indicates that the offender has less than 4 months remaining on his or her sentence accounting for time served may not be confined in the penitentiary system of the Department of Corrections but may be assigned to electronic home detention, an adult transition center, or another facility or program within the Department of Corrections. Effective January 1, 2018.

LRB099 19679 RLC 44076 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Unified Code of Corrections is amended by
5 changing Sections 5-4-1 and 5-8-6 as follows:

6 (730 ILCS 5/5-4-1) (from Ch. 38, par. 1005-4-1)

7 Sec. 5-4-1. Sentencing Hearing.

8 (a) Except when the death penalty is sought under hearing
9 procedures otherwise specified, after a determination of
10 guilt, a hearing shall be held to impose the sentence. However,
11 prior to the imposition of sentence on an individual being
12 sentenced for an offense based upon a charge for a violation of
13 Section 11-501 of the Illinois Vehicle Code or a similar
14 provision of a local ordinance, the individual must undergo a
15 professional evaluation to determine if an alcohol or other
16 drug abuse problem exists and the extent of such a problem.
17 Programs conducting these evaluations shall be licensed by the
18 Department of Human Services. However, if the individual is not
19 a resident of Illinois, the court may, in its discretion,
20 accept an evaluation from a program in the state of such
21 individual's residence. The court may in its sentencing order
22 approve an eligible defendant for placement in a Department of
23 Corrections impact incarceration program as provided in

1 Section 5-8-1.1 or 5-8-1.3. The court may in its sentencing
2 order recommend a defendant for placement in a Department of
3 Corrections substance abuse treatment program as provided in
4 paragraph (a) of subsection (1) of Section 3-2-2 conditioned
5 upon the defendant being accepted in a program by the
6 Department of Corrections. At the hearing the court shall:

7 (1) consider the evidence, if any, received upon the
8 trial;

9 (2) consider any presentence reports;

10 (3) consider the financial impact of incarceration
11 based on the financial impact statement filed with the
12 clerk of the court by the Department of Corrections;

13 (4) consider evidence and information offered by the
14 parties in aggravation and mitigation;

15 (4.5) consider substance abuse treatment, eligibility
16 screening, and an assessment, if any, of the defendant by
17 an agent designated by the State of Illinois to provide
18 assessment services for the Illinois courts;

19 (5) hear arguments as to sentencing alternatives;

20 (6) afford the defendant the opportunity to make a
21 statement in his own behalf;

22 (7) afford the victim of a violent crime or a violation
23 of Section 11-501 of the Illinois Vehicle Code, or a
24 similar provision of a local ordinance, or a qualified
25 individual affected by: (i) a violation of Section 405,
26 405.1, 405.2, or 407 of the Illinois Controlled Substances

1 Act or a violation of Section 55 or Section 65 of the
2 Methamphetamine Control and Community Protection Act, or
3 (ii) a Class 4 felony violation of Section 11-14, 11-14.3
4 except as described in subdivisions (a)(2)(A) and
5 (a)(2)(B), 11-15, 11-17, 11-18, 11-18.1, or 11-19 of the
6 Criminal Code of 1961 or the Criminal Code of 2012,
7 committed by the defendant the opportunity to make a
8 statement concerning the impact on the victim and to offer
9 evidence in aggravation or mitigation; provided that the
10 statement and evidence offered in aggravation or
11 mitigation must first be prepared in writing in conjunction
12 with the State's Attorney before it may be presented orally
13 at the hearing. Any sworn testimony offered by the victim
14 is subject to the defendant's right to cross-examine. All
15 statements and evidence offered under this paragraph (7)
16 shall become part of the record of the court. For the
17 purpose of this paragraph (7), "qualified individual"
18 means any person who (i) lived or worked within the
19 territorial jurisdiction where the offense took place when
20 the offense took place; and (ii) is familiar with various
21 public places within the territorial jurisdiction where
22 the offense took place when the offense took place. For the
23 purposes of this paragraph (7), "qualified individual"
24 includes any peace officer, or any member of any duly
25 organized State, county, or municipal peace unit assigned
26 to the territorial jurisdiction where the offense took

1 place when the offense took place;

2 (8) in cases of reckless homicide afford the victim's
3 spouse, guardians, parents or other immediate family
4 members an opportunity to make oral statements;

5 (9) in cases involving a felony sex offense as defined
6 under the Sex Offender Management Board Act, consider the
7 results of the sex offender evaluation conducted pursuant
8 to Section 5-3-2 of this Act; and

9 (10) make a finding of whether a motor vehicle was used
10 in the commission of the offense for which the defendant is
11 being sentenced.

12 (b) All sentences shall be imposed by the judge based upon
13 his independent assessment of the elements specified above and
14 any agreement as to sentence reached by the parties. The judge
15 who presided at the trial or the judge who accepted the plea of
16 guilty shall impose the sentence unless he is no longer sitting
17 as a judge in that court. Where the judge does not impose
18 sentence at the same time on all defendants who are convicted
19 as a result of being involved in the same offense, the
20 defendant or the State's Attorney may advise the sentencing
21 court of the disposition of any other defendants who have been
22 sentenced.

23 (c) In imposing a sentence for a violent crime or for an
24 offense of operating or being in physical control of a vehicle
25 while under the influence of alcohol, any other drug or any
26 combination thereof, or a similar provision of a local

1 ordinance, when such offense resulted in the personal injury to
2 someone other than the defendant, the trial judge shall specify
3 on the record the particular evidence, information, factors in
4 mitigation and aggravation or other reasons that led to his
5 sentencing determination. The full verbatim record of the
6 sentencing hearing shall be filed with the clerk of the court
7 and shall be a public record.

8 (c-1) In imposing a sentence for the offense of aggravated
9 kidnapping for ransom, home invasion, armed robbery,
10 aggravated vehicular hijacking, aggravated discharge of a
11 firearm, or armed violence with a category I weapon or category
12 II weapon, the trial judge shall make a finding as to whether
13 the conduct leading to conviction for the offense resulted in
14 great bodily harm to a victim, and shall enter that finding and
15 the basis for that finding in the record.

16 (c-2) If the defendant is sentenced to prison, other than
17 when a sentence of natural life imprisonment or a sentence of
18 death is imposed, at the time the sentence is imposed the judge
19 shall state on the record in open court the approximate period
20 of time the defendant will serve in custody according to the
21 then current statutory rules and regulations for sentence
22 credit found in Section 3-6-3 and other related provisions of
23 this Code. This statement is intended solely to inform the
24 public, has no legal effect on the defendant's actual release,
25 and may not be relied on by the defendant on appeal.

26 The judge's statement, to be given after pronouncing the

1 sentence, other than when the sentence is imposed for one of
2 the offenses enumerated in paragraph (a)(3) of Section 3-6-3,
3 shall include the following:

4 "The purpose of this statement is to inform the public of
5 the actual period of time this defendant is likely to spend in
6 prison as a result of this sentence. The actual period of
7 prison time served is determined by the statutes of Illinois as
8 applied to this sentence by the Illinois Department of
9 Corrections and the Illinois Prisoner Review Board. In this
10 case, assuming the defendant receives all of his or her
11 sentence credit, the period of estimated actual custody is ...
12 years and ... months, less up to 180 days additional sentence
13 credit for good conduct. If the defendant, because of his or
14 her own misconduct or failure to comply with the institutional
15 regulations, does not receive those credits, the actual time
16 served in prison will be longer. The defendant may also receive
17 an additional one-half day sentence credit for each day of
18 participation in vocational, industry, substance abuse, and
19 educational programs as provided for by Illinois statute."

20 When the sentence is imposed for one of the offenses
21 enumerated in paragraph (a)(3) of Section 3-6-3, other than
22 when the sentence is imposed for one of the offenses enumerated
23 in paragraph (a)(2) of Section 3-6-3 committed on or after June
24 19, 1998, and other than when the sentence is imposed for
25 reckless homicide as defined in subsection (e) of Section 9-3
26 of the Criminal Code of 1961 or the Criminal Code of 2012 if

1 the offense was committed on or after January 1, 1999, and
2 other than when the sentence is imposed for aggravated arson if
3 the offense was committed on or after July 27, 2001 (the
4 effective date of Public Act 92-176), and other than when the
5 sentence is imposed for aggravated driving under the influence
6 of alcohol, other drug or drugs, or intoxicating compound or
7 compounds, or any combination thereof as defined in
8 subparagraph (C) of paragraph (1) of subsection (d) of Section
9 11-501 of the Illinois Vehicle Code committed on or after
10 January 1, 2011 (the effective date of Public Act 96-1230), the
11 judge's statement, to be given after pronouncing the sentence,
12 shall include the following:

13 "The purpose of this statement is to inform the public of
14 the actual period of time this defendant is likely to spend in
15 prison as a result of this sentence. The actual period of
16 prison time served is determined by the statutes of Illinois as
17 applied to this sentence by the Illinois Department of
18 Corrections and the Illinois Prisoner Review Board. In this
19 case, assuming the defendant receives all of his or her
20 sentence credit, the period of estimated actual custody is ...
21 years and ... months, less up to 90 days additional sentence
22 credit for good conduct. If the defendant, because of his or
23 her own misconduct or failure to comply with the institutional
24 regulations, does not receive those credits, the actual time
25 served in prison will be longer. The defendant may also receive
26 an additional one-half day sentence credit for each day of

1 participation in vocational, industry, substance abuse, and
2 educational programs as provided for by Illinois statute."

3 When the sentence is imposed for one of the offenses
4 enumerated in paragraph (a)(2) of Section 3-6-3, other than
5 first degree murder, and the offense was committed on or after
6 June 19, 1998, and when the sentence is imposed for reckless
7 homicide as defined in subsection (e) of Section 9-3 of the
8 Criminal Code of 1961 or the Criminal Code of 2012 if the
9 offense was committed on or after January 1, 1999, and when the
10 sentence is imposed for aggravated driving under the influence
11 of alcohol, other drug or drugs, or intoxicating compound or
12 compounds, or any combination thereof as defined in
13 subparagraph (F) of paragraph (1) of subsection (d) of Section
14 11-501 of the Illinois Vehicle Code, and when the sentence is
15 imposed for aggravated arson if the offense was committed on or
16 after July 27, 2001 (the effective date of Public Act 92-176),
17 and when the sentence is imposed for aggravated driving under
18 the influence of alcohol, other drug or drugs, or intoxicating
19 compound or compounds, or any combination thereof as defined in
20 subparagraph (C) of paragraph (1) of subsection (d) of Section
21 11-501 of the Illinois Vehicle Code committed on or after
22 January 1, 2011 (the effective date of Public Act 96-1230), the
23 judge's statement, to be given after pronouncing the sentence,
24 shall include the following:

25 "The purpose of this statement is to inform the public of
26 the actual period of time this defendant is likely to spend in

1 prison as a result of this sentence. The actual period of
2 prison time served is determined by the statutes of Illinois as
3 applied to this sentence by the Illinois Department of
4 Corrections and the Illinois Prisoner Review Board. In this
5 case, the defendant is entitled to no more than 4 1/2 days of
6 sentence credit for each month of his or her sentence of
7 imprisonment. Therefore, this defendant will serve at least 85%
8 of his or her sentence. Assuming the defendant receives 4 1/2
9 days credit for each month of his or her sentence, the period
10 of estimated actual custody is ... years and ... months. If the
11 defendant, because of his or her own misconduct or failure to
12 comply with the institutional regulations receives lesser
13 credit, the actual time served in prison will be longer."

14 When a sentence of imprisonment is imposed for first degree
15 murder and the offense was committed on or after June 19, 1998,
16 the judge's statement, to be given after pronouncing the
17 sentence, shall include the following:

18 "The purpose of this statement is to inform the public of
19 the actual period of time this defendant is likely to spend in
20 prison as a result of this sentence. The actual period of
21 prison time served is determined by the statutes of Illinois as
22 applied to this sentence by the Illinois Department of
23 Corrections and the Illinois Prisoner Review Board. In this
24 case, the defendant is not entitled to sentence credit.
25 Therefore, this defendant will serve 100% of his or her
26 sentence."

1 When the sentencing order recommends placement in a
2 substance abuse program for any offense that results in
3 incarceration in a Department of Corrections facility and the
4 crime was committed on or after September 1, 2003 (the
5 effective date of Public Act 93-354), the judge's statement, in
6 addition to any other judge's statement required under this
7 Section, to be given after pronouncing the sentence, shall
8 include the following:

9 "The purpose of this statement is to inform the public of
10 the actual period of time this defendant is likely to spend in
11 prison as a result of this sentence. The actual period of
12 prison time served is determined by the statutes of Illinois as
13 applied to this sentence by the Illinois Department of
14 Corrections and the Illinois Prisoner Review Board. In this
15 case, the defendant shall receive no sentence credit for good
16 conduct under clause (3) of subsection (a) of Section 3-6-3
17 until he or she participates in and completes a substance abuse
18 treatment program or receives a waiver from the Director of
19 Corrections pursuant to clause (4.5) of subsection (a) of
20 Section 3-6-3."

21 (c-4) Before the sentencing hearing and as part of the
22 presentence investigation under Section 5-3-1, the court shall
23 inquire of the defendant whether the defendant is currently
24 serving in or is a veteran of the Armed Forces of the United
25 States. If the defendant is currently serving in the Armed
26 Forces of the United States or is a veteran of the Armed Forces

1 of the United States and has been diagnosed as having a mental
2 illness by a qualified psychiatrist or clinical psychologist or
3 physician, the court may:

4 (1) order that the officer preparing the presentence
5 report consult with the United States Department of
6 Veterans Affairs, Illinois Department of Veterans'
7 Affairs, or another agency or person with suitable
8 knowledge or experience for the purpose of providing the
9 court with information regarding treatment options
10 available to the defendant, including federal, State, and
11 local programming; and

12 (2) consider the treatment recommendations of any
13 diagnosing or treating mental health professionals
14 together with the treatment options available to the
15 defendant in imposing sentence.

16 For the purposes of this subsection (c-4), "qualified
17 psychiatrist" means a reputable physician licensed in Illinois
18 to practice medicine in all its branches, who has specialized
19 in the diagnosis and treatment of mental and nervous disorders
20 for a period of not less than 5 years.

21 (c-6) In imposing a sentence, the trial judge shall
22 specify, on the record, the particular evidence and other
23 reasons which led to his or her determination that a motor
24 vehicle was used in the commission of the offense.

25 (c-7) In imposing a sentence for a Class 3 or 4 felony,
26 other than a violent crime as defined in Section 3 of the

1 Rights of Crime Victims and Witnesses Act, the court shall
2 determine and indicate in the sentencing order whether the
3 defendant has 4 or more or fewer than 4 months remaining on his
4 or her sentence accounting for time served.

5 (d) When the defendant is committed to the Department of
6 Corrections, the State's Attorney shall and counsel for the
7 defendant may file a statement with the clerk of the court to
8 be transmitted to the department, agency or institution to
9 which the defendant is committed to furnish such department,
10 agency or institution with the facts and circumstances of the
11 offense for which the person was committed together with all
12 other factual information accessible to them in regard to the
13 person prior to his commitment relative to his habits,
14 associates, disposition and reputation and any other facts and
15 circumstances which may aid such department, agency or
16 institution during its custody of such person. The clerk shall
17 within 10 days after receiving any such statements transmit a
18 copy to such department, agency or institution and a copy to
19 the other party, provided, however, that this shall not be
20 cause for delay in conveying the person to the department,
21 agency or institution to which he has been committed.

22 (e) The clerk of the court shall transmit to the
23 department, agency or institution, if any, to which the
24 defendant is committed, the following:

25 (1) the sentence imposed;

26 (2) any statement by the court of the basis for

1 imposing the sentence;

2 (3) any presentence reports;

3 (3.5) any sex offender evaluations;

4 (3.6) any substance abuse treatment eligibility
5 screening and assessment of the defendant by an agent
6 designated by the State of Illinois to provide assessment
7 services for the Illinois courts;

8 (4) the number of days, if any, which the defendant has
9 been in custody and for which he is entitled to credit
10 against the sentence, which information shall be provided
11 to the clerk by the sheriff;

12 (4.1) any finding of great bodily harm made by the
13 court with respect to an offense enumerated in subsection
14 (c-1);

15 (5) all statements filed under subsection (d) of this
16 Section;

17 (6) any medical or mental health records or summaries
18 of the defendant;

19 (7) the municipality where the arrest of the offender
20 or the commission of the offense has occurred, where such
21 municipality has a population of more than 25,000 persons;

22 (8) all statements made and evidence offered under
23 paragraph (7) of subsection (a) of this Section; and

24 (9) all additional matters which the court directs the
25 clerk to transmit.

26 (f) In cases in which the court finds that a motor vehicle

1 was used in the commission of the offense for which the
2 defendant is being sentenced, the clerk of the court shall,
3 within 5 days thereafter, forward a report of such conviction
4 to the Secretary of State.

5 (Source: P.A. 96-86, eff. 1-1-10; 96-1180, eff. 1-1-11;
6 96-1230, eff. 1-1-11; 96-1551, eff. 7-1-11; 97-333, eff.
7 8-12-11; 97-697, eff. 6-22-12; 97-1150, eff. 1-25-13.)

8 (730 ILCS 5/5-8-6) (from Ch. 38, par. 1005-8-6)

9 Sec. 5-8-6. Place of Confinement.

10 (a) Except as otherwise provided in this subsection (a),
11 offenders ~~Offenders~~ sentenced to a term of imprisonment for a
12 felony shall be committed to the penitentiary system of the
13 Department of Corrections. However, such sentence shall not
14 limit the powers of the Department of Children and Family
15 Services in relation to any child under the age of one year in
16 the sole custody of a person so sentenced, nor in relation to
17 any child delivered by a female so sentenced while she is so
18 confined as a consequence of such sentence. Except as otherwise
19 provided in this subsection (a), a ~~A~~ person sentenced for a
20 felony may be assigned by the Department of Corrections to any
21 of its institutions, facilities or programs. An offender
22 sentenced to a term of imprisonment for a Class 3 or 4 felony,
23 other than a violent crime as defined in Section 3 of the
24 Rights of Crime Victims and Witnesses Act, in which the
25 sentencing order indicates that the offender has less than 4

1 months remaining on his or her sentence accounting for time
2 served may not be confined in the penitentiary system of the
3 Department of Corrections but may be assigned to electronic
4 home detention under Article 8A of this Chapter V, an adult
5 transition center, or another facility or program within the
6 Department of Corrections.

7 (b) Offenders sentenced to a term of imprisonment for less
8 than one year shall be committed to the custody of the sheriff.
9 A person committed to the Department of Corrections, prior to
10 July 14, 1983, for less than one year may be assigned by the
11 Department to any of its institutions, facilities or programs.

12 (c) All offenders under 17 years of age when sentenced to
13 imprisonment shall be committed to the Department of Juvenile
14 Justice and the court in its order of commitment shall set a
15 definite term. Such order of commitment shall be the sentence
16 of the court which may be amended by the court while
17 jurisdiction is retained; and such sentence shall apply
18 whenever the offender sentenced is in the control and custody
19 of the Department of Corrections. The provisions of Section
20 3-3-3 shall be a part of such commitment as fully as though
21 written in the order of commitment. The committing court shall
22 retain jurisdiction of the subject matter and the person until
23 he or she reaches the age of 21 unless earlier discharged.
24 However, the Department of Juvenile Justice shall, after a
25 juvenile has reached 17 years of age, petition the court to
26 conduct a hearing pursuant to subsection (c) of Section 3-10-7

1 of this Code.

2 (d) No defendant shall be committed to the Department of
3 Corrections for the recovery of a fine or costs.

4 (e) When a court sentences a defendant to a term of
5 imprisonment concurrent with a previous and unexpired sentence
6 of imprisonment imposed by any district court of the United
7 States, it may commit the offender to the custody of the
8 Attorney General of the United States. The Attorney General of
9 the United States, or the authorized representative of the
10 Attorney General of the United States, shall be furnished with
11 the warrant of commitment from the court imposing sentence,
12 which warrant of commitment shall provide that, when the
13 offender is released from federal confinement, whether by
14 parole or by termination of sentence, the offender shall be
15 transferred by the Sheriff of the committing county to the
16 Department of Corrections. The court shall cause the Department
17 to be notified of such sentence at the time of commitment and
18 to be provided with copies of all records regarding the
19 sentence.

20 (Source: P.A. 94-696, eff. 6-1-06.)

21 Section 99. Effective date. This Act takes effect on
22 January 1, 2018.